

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

THE KRYSTAL COMPANY, et al.,

Debtors.

Chapter 11

Case No. 20-61065 (PWB)

(Jointly Administered)

KRY WARNER ROBINS REALTY, LLC,

Movant,

v.

THE KRYSTAL COMPANY,

Respondent.

CONTESTED MATTER

**OBJECTION OF KRY WARNER ROBINS REALTY, LLC TO DEBTORS'
NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

KRY Warner Robins Realty, LLC (“KRY”), a creditor, party-in-interest, and landlord of Debtor The Krystal Company¹ (collectively “Debtor”), objects to the Debtors’ Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases (the “Notice”) [Doc. 310] and states as follows:

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334.
2. This is a core proceeding under 28 U.S.C. § 457(b).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: The Krystal Company (4140); Krystal Holdings, Inc. (5381); and K-Square Acquisition Co., LLC (8916). The location of the Debtors’ corporate headquarters and service address is: 1455 Lincoln Parkway, Suite 600, Dunwoody, Georgia 30346.

3. KRY's predecessor, WIL-ALT Warner Robins LLC, entered into a Lease as lessor with Debtor as tenant on February 27, 2017 (the "Lease"), for the premises located at Highway 96 and Lake Joy Road in Warner Robins, Georgia (the "Leased Premises") as more particularly described in the Lease.

4. WIL-ALT Warner Robins LLC assigned its interest in the Lease to KRY by that certain Assignment of Landlord's Interest in Lease (the "Assignment") dated September 1, 2017.

5. Debtor performed its obligation under the Lease until it failed to pay pre-petition rent to KRY for November and December, 2019, and for January 1-18, 2020.

6. Debtor failed to pay Warner Robins and Houston County, Georgia 2019 property taxes that were due by December 20, 2019.

7. Debtor failed to pay post-petition stub rent to KRY under the Lease for January 19-31, 2020, contrary to the provisions of 11 U.S.C. § 365(d)(3).

8. On January 19, 2020, Debtor filed its Chapter 11 Bankruptcy Petition.

9. On February 12, 2020, Debtor filed a Motion to sell all assets [Doc. 148].

10. On March 4, 2020, the Court entered an Order Approving All Bidding and Sale Procedures of Debtors' Assets [Doc 227] in which it established various deadlines, including April 27, 2020, at 5:00 P.M. as the deadline to object to Debtors' proposed cure under 11 U.S.C. § 365(b)(1).

11. Debtor failed to pay post-petition rent to KRY under the Lease for April 2020 in its entirety, contrary to the provisions of 11 U.S.C. § 365(d)(3).

12. On April 7, 2020, Debtors filed a Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases [Doc. 310] that provided for cure costs for each unexpired lease which the Debtors may assume (the “Notice”).

13. The Notice included in its Exhibit A the cure amount for KRY’s Lease as \$38,593.80. KRY objects to Debtors’ proposed cure amount as it fails to indicate what is included in the proposed sum, or how much of that cure is attributable to taxes, insurance, pre- or post-petition rent, attorney’s fees, or any other obligation of Debtors to KRY under the Lease.

14. Landlord KRY shows that it is owed **\$47,071.45** as of April 27, 2020, itemized as follows:

- A. pre-petition rent for November and December, 2019 and January 1-18, 2020 in the amount of **\$25,006.68**;
- B. Stub rent for January 19-31, 2020, in the amount of **\$4,123.73**;
- C. Post-petition rent for April 2020 in the amount of **\$9,648.45**;
- D. 2019 Real property taxes assessed by the City of Warner Robins, Georgia in the amount of **\$2,502.95**;
- E. 2019 Real property taxes assessed by Houston County, Georgia in the amount of **\$5,789.64**; and

15. KRY further objects to the Notice to the extent the cure fails to include rent of **\$9,648.45** due on May 1, 2020, and attorney’s fees that Landlord incurred as a result of Debtors’ default under the Lease.

WHEREFORE, KRY respectfully requests the following:

- A. That this Court Order that Debtor's cure amount for KRY is **\$47,071.45** as of April 27, 2020, for (i) the pre-petition rent for November and December 2019 and January 1-19, 2020, (ii) post-petition rent for January 20-31, 2020, (iii) post-petition rent for April 2020; and (iv) 2019 City and County real property taxes;
- B. An Order compelling Debtor to pay May 2020 rent of \$9,648.45 if Debtor fails to pay it when due on May 1, 2020;
- C. Attorneys' fees and expenses; and
- D. Such other and further relief as this Court deems just.

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2020, a copy of the foregoing Objection to Debtors' Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases was electronically filed and served via the Court's ECF filing system upon all parties registered to receive notice and listed on the attached mail notice list. Others listed on the attached mail notice list who do not receive notice of filing by operation of the Court's electronic filing system, and the parties listed below were served a copy of the foregoing Objection via first class U.S. Mail, with adequate postage prepaid.

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Manual Notice List

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This 27th day of April, 2020.

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